

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Albert C. Burgess, Jr.,

Case No. 24-cv-2676 (JMB/LIB)

Petitioner,

v.

REPORT AND RECOMMENDATION

United States of America,

Respondent.

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provision of 28 U.S.C. § 636, and upon Albert C. Burgess Jr.’s Petition for a writ of habeas corpus. [Docket No. 1].

On August 8, 2024, the Court issued an Order requiring Petitioner Albert C. Burgess, Jr. to “submit a filing . . . explaining [his] attempts to use the [Bureau of Prisons’s] administrative remedies to address his concerns (or, alternatively, stating why the Court should excuse the exhaustion requirement here).” (See Order [Docket No. 3] at 2). The Court provided Plaintiff with thirty (30) days—until September 7, 2024—to submit this filing, with a warning that failure to do so would result in a recommendation to dismiss the case without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). (See Id.).

That deadline has now passed, and Petitioner has not submitted the required filing. In fact, Petitioner has not taken any action in the present case since he filed his Petition. Accordingly, this Court recommends dismissing this action without prejudice for failure to prosecute. See, e.g., Henderson v. Renaissance Grand Hotel, 267 F. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Therefore, based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED without prejudice** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: October 8, 2024

s/Leo I. Brisbois
Hon. Leo I. Brisbois
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).